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September 23, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

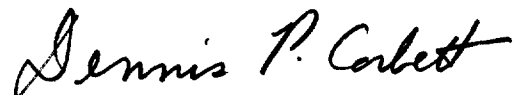
Re: MM Docket No. 87-268

Dear Mr. Caton:

On behalf of Davis Television Topeka, LLC, Davis Television Pittsburg, LLC, Davis Television Waterville, LLC, Davis Television Corpus Christi, LLC, Davis Television Fairmont, LLC, Davis Television Duluth, LLC, and Davis Television Wausau, LLC, I am transmitting herewith an original and 11 copies of their Opposition to Supplement to Petition for Reconsideration in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Dennis P. Corbett

DPC:kbs  
Enclosures

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**Federal Communications Commission**

WASHINGTON, D.C. 20554

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SEP 23 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

**OPPOSITION TO SUPPLEMENT TO PETITION FOR RECONSIDERATION**

Davis Television Topeka, LLC, Davis Television Pittsburg, LLC, Davis Television Waterville, LLC, Davis Television Corpus Christi, LLC, Davis Television Fairmont, LLC, Davis Television Duluth, LLC, and Davis Television Wausau, LLC ("Davis TV"), hereby oppose the August 22, 1997 "Supplement to Petition for Reconsideration" filed in the above-captioned proceeding by the Brechner family ("Brechner"), which owns the licensees of television stations in Topeka, Kansas and Salisbury, Maryland. In support whereof, the following is shown.

**Background**

What Brechner has styled a "Supplement" is in reality an opposition to Davis TV's June 13, 1997 Petition for Partial Reconsideration ("Petition) of the Commission's Sixth Report and Order, FCC 97-115, released April 21, 1997 in this proceeding.<sup>1/</sup> Brechner explains its

<sup>1/</sup>

The Commission's Order Denying Consolidation of Filing Deadlines, DA 97-1451, released July 14, 1997 ("Consolidation Denial"), at note 3, established the deadline  
(continued...)

interest as an effort to minimize the “difficulties, potential extra expense, competitive disadvantages, and likely serious business impact on [Brechtner’s] stations that could result from the fact that one or both of [its] two stations’ DTV assignments may ultimately prove to be outside the ‘core spectrum.’” Supplement at 1.

The essence of Brechtner’s argument is that, as an incumbent broadcaster, its DTV spectrum needs should be given priority over those of new competitors such as Davis TV. According to Brechtner, Davis TV’s requested relief should be denied in order to allay Brechtner’s fears about the digital future of its own stations.

**I. Brechtner’s Supplement Should Be Rejected As An Untimely Opposition To Davis TV’s Petition**

On July 2, 1997, the Commission issued an Order, DA 1377, announcing that it would give interested parties until August 22, 1997 to file supplemental comments relating to the impact of the then-just released OET Bulletin No. 69 on the Commission’s proposed DTV conversion plan. On July 14, 1997, the Commission released its Consolidated Denial, supra, denying a request to extend to August 22, 1997 the deadline for oppositions to petitions for reconsideration of the Sixth Report and Order, supra. The Commission made clear that the August 22, 1997 deadline was established for the limited purpose of providing parties with an

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<sup>1/</sup>(...continued)

for oppositions to supplemental filings as the date 15 days from the date of public notice of the filing of the supplements. Federal Register publication concerning the supplements occurred on September 8, 1997, making September 23, 1997 the deadline for this opposition.

opportunity to review and comment on the new Bulletin and that parties wishing to oppose a reconsideration petition needed to file by July 18, 1997.

Brechner has completely ignored these firmly established deadlines and filed, on August 22, 1997, a self-styled supplement that is a “garden variety” opposition to Davis TV’s Petition and has nothing to do with OET Bulletin 69. Surprisingly, Brechner does not even acknowledge these deadlines nor proffer any justification for its late filing. On this ground alone, Brechner’s Supplement should be summarily dismissed as untimely.<sup>2/</sup>

## **II. Brechner’s Fears Concerning Its Digital Future Are Misplaced**

Not only is the Supplement untimely, it is lacking substantive merit. Brechner ultimately controls two existing television stations — KTKA-TV, Channel 49, Topeka, Kansas and WMDT-TV, Channel 47, Salisbury, Maryland. The current channel of each of these stations is within the “core spectrum” (Channels 2-51) tentatively identified by the Commission in the Sixth Report and Order. For digital conversion purposes, KTKA-TV has been assigned Channel 48, also within that core, and WMDT-TV has been assigned Channel 53, which is outside that core.

With respect to KTKA-TV, Brechner has no core spectrum issue to concern itself with, since both its NTSC and DTV channels are within the core.<sup>3/</sup> With respect to WMDT-TV,

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<sup>2/</sup> Ironically, Brechner several times attempts to characterize Davis TV’s Topeka application as late-filed. That charge is simply untrue. Davis TV filed its application by the September 20, 1996 deadline established by the Commission.

<sup>3/</sup> In Brechner’s own Petition for Reconsideration of the Sixth Report and Order, Brechner expressed its concern over the fact that adoption of an “alternative” core  
(continued...)

under the conversion procedures currently in place, Brechner will have an option at the end of the conversion period to operate digitally on its current NTSC Channel 47 (within the core). For that reason, Brechner's attack on Davis TV's Petition comes with poor grace. Simply put, Brechner has a guaranteed digital future under the Commission's current plan and Davis TV does not. Brechner does not need to worry about scarce spectrum being allocated to Davis TV at Brechner's expense. Brechner already has what it needs.

### **III. Substantial Public Policy Considerations Weigh In Davis TV's Favor And Against Brechner's Supplement**

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Given the Supplement's lack of a substantive basis, its only logical purpose would appear to be to throw a roadblock in front of looming new competition to its Topeka station. While Brechner cloaks its arguments in the rhetoric of preservation of its existing service, Brechner fails to demonstrate that a Commission grant of Davis TV's requested relief would imperil its stations' digital future. However, if Brechner could successfully eliminate the threat of any digital operation by Davis TV in Topeka, Brechner might thereby have insulated itself from new full power over-the-air competition in that market, given the Commission's strict approach to deleting unapplied for television allotments as part of the DTV conversion process. Commission

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<sup>3/</sup>(...continued)

spectrum of Channels 2-46 would necessitate "double moves" by both of its stations since all of their channels, both NTSC and DTV, are outside of that core. While Brechner argues that such double moves would be expensive and inconvenient, nowhere does Brechner contend that there would not be enough spectrum to accommodate them. Even if this hypothetical expense and inconvenience to Brechner were to come to pass, it cannot be equated with the threat hanging over Davis TV — that of having no DTV channel at all on which to operate.


policy strongly favors the introduction of robust competition wherever possible, and Davis TV's Petition is clearly intended to further that worthy objective. Davis TV merely wants to ensure that the opportunity to file for vacant television channels by September 1996 remains real and viable, not illusory. Davis TV has asked the Commission to take modest steps that recognize the reality of the digital conversion process for construction permit applicants who hold the promise of bringing meaningful competition to protectionist-minded incumbents like Brechner.

**Conclusion**

For the reasons set forth above, the Supplement should be dismissed as procedurally and substantively defective.

Respectfully submitted,

DAVIS TELEVISION TOPEKA, LLC  
DAVIS TELEVISION PITTSBURG, LLC  
DAVIS TELEVISION WATERTOWN, LLC  
DAVIS TELEVISION CORPUS CHRISTI, LLC  
DAVIS TELEVISION FAIRMONT, LLC  
DAVIS TELEVISION DULUTH, LLC  
DAVIS TELEVISION WAUSAU, LLC

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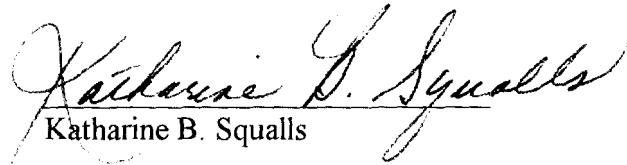
September 23, 1997

Their Attorneys

**CERTIFICATE OF SERVICE**

I, Katharine B. Squalls, hereby certify that a true and correct copy of the foregoing  
"Opposition to Supplement for Petition for Reconsideration" was sent by first-class postage  
prepaid mail this 23rd day of September 1997 to the following:

Mr. Berl Brechner  
222 Pasadena Place  
Orlando, FL 32803

  
Katharine B. Squalls